

## Pabon, Cynthia

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**From:** Pabon, Cynthia  
**Sent:** Tuesday, August 18, 2015 6:46 AM  
**To:** 'commissioner@dep.state.nj.us'  
**Cc:** 'magdalena.padilla@dep.state.nj.us'; 'Renee.Dilapo@dep.state.nj.us'; 'Fred.Mumford@dep.state.nj.us'; Desir, James; O'Neal Jr., Rudnell R.  
**Subject:** Notice of Award, V00242002  
**Attachments:** V00242002D Letter.pdf; V00242002D Award.pdf

Dear Commissioner Martin:

Attached is your notice of **Award/Amendment** and cover letter. Please note that EPA has eliminated the requirement for recipients to submit a signed Affirmation of Award for assistance agreements. An assistance agreement recipient demonstrates its commitment to carry out the award by either: 1) drawing down funds within 21 days after the EPA award or amendment mailing date; or, 2) not filing a notice of disagreement with the award terms and conditions within 21 days after the EPA award or amendment mailing date. Please see the "Notice of Award" section of the agreement for more information. Due to this change, you are not required to sign and return a copy of the attached agreement. However, if you wish to file a notice of disagreement with the award terms and conditions, you have may email your notice to [Region2\\_GrantApplicationBox@epa.gov](mailto:Region2_GrantApplicationBox@epa.gov).

As a reminder EPA Region 2's dedicated email in-box may also be used for receiving original pdf copies of grant forms and documents. The email in-box address is [Region2\\_GrantApplicationBox@epa.gov](mailto:Region2_GrantApplicationBox@epa.gov) and we will accept signed pdf copies (documents submitted in other file formats will not be accepted) of the following documents through this box:

- Financial assistance applications for grants and cooperative agreements that are not otherwise required to be submitted through Grants.gov, including all required forms, assurances and certifications. Only scanned pdf documents with signatures will be accepted as valid applications.
- Requests for award amendments, including requests to rebudget funds and to extend the budget and/or project periods of the award;
- Indirect Cost Rate agreements and proposals;
- Courtesy copies of Federal Financial Reports (FFRs; Standard Form 425s) that you submit to the EPA Las Vegas Finance Center ([LVFC-grants@epa.gov](mailto:LVFC-grants@epa.gov)); EPA Form 5700-52A, "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements." Only scanned pdf documents with signatures prepared on the current form will be accepted as valid reports. Documents submitted in other file formats or on expired forms will not be accepted as valid reports. A blank copy of the current Form 5700-52A can be downloaded from the EPA website, [http://www.epa.gov/osbp/dbe\\_reporting.htm](http://www.epa.gov/osbp/dbe_reporting.htm)
- Updates to recipient information, including email addresses, changes in contact information or changes in authorized representatives.

Also, please be aware that EPA has developed a [policy to encourage green practices in assistance agreements](http://www.epa.gov/region2/climate/pdf/greeningassistance_agreements.pdf), which can be found at the following URL:  
[http://www.epa.gov/region2/climate/pdf/greeningassistance\\_agreements.pdf](http://www.epa.gov/region2/climate/pdf/greeningassistance_agreements.pdf)

We encourage you to familiarize yourself with the policy and the green practices it covers. If you have any questions about the policy, please contact the EPA Project Officer identified on your attached notice of Award/Amendment document.

**Cynthia S. Pabon**

USEPA, Region 2  
Grants Management Specialist

(212) 637-3405 (Tuesdays & Wednesdays)

(718) 978-2595 (Mondays & Thursdays)

Pabon.Cynthia@epa.gov

Grants and Audit Management Branch

290 Broadway, 27th Floor

New York, NY 10007



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

August 18, 2015

**VIA E-MAIL**

**Agreement No. V00242002  
Amendment D**

Bob Martin  
Commissioner  
New Jersey Dept of Environmental Protection  
440 East State Street, P.O. Box 420  
Trenton, NJ 08625-0420

Attention: Magdalena Padilla

Subject: Hazardous Waste Site Inventory Cooperative Agreement

Dear Commissioner Martin:

I am pleased to enclose Amendment D to the above-referenced agreement. This amendment increases the agreement by \$765,000 from \$12,318,008 to \$13,113,008 as requested in your application dated May 20, 2015 and revised May 29, 2015 and June 23, 2015. In addition, the budget and project period expiration dates are extended from September 30, 2015 to September 30, 2016.

Please be advised that as of December 26, 2014, the Office of Management and Budget's (OMB's) Uniform Grants Guidance (UGG), codified at 2 CFR Part 200, took effect nationwide for all new federal awards and monetary amendments made on or after this date. For EPA assistance agreements, these new rules supersede the Uniform Administrative Requirements (40 CFR Parts 30 and 31), and streamline requirements from eight OMB Circulars, including Cost Principles and Audit Requirements. Also in effect as of December 26, 2014, are EPA's implementing regulations at 2 CFR Part 1500, which clarify selected specific requirements for EPA assistance agreements. All previous Terms and Conditions remain in effect for funds awarded and obligated prior to the date of this amendment, with the exceptions of, Grant-Specific Administrative Conditions 13 (UTILIZATION OF SMALL, MINORITY AND WOMEN'S BUSINESS ENTERPRISES (MBE/WBE)) and 27 (EXTENSION OF PROJECT/BUDGET PERIOD EXPIRATION DATE), which are superseded by the conditions in this amendment. This amendment also adds an entirely new set of General, and Grant-Specific Administrative and Programmatic conditions that apply to the unobligated balances and newly awarded funds. Please pay careful attention to the terms and conditions of the award.

EPA has compiled requirements that apply to all agreements in an on-line set of conditions, which are referenced in the section of the award entitled, GENERAL TERMS AND CONDITIONS. You must access these and ensure your organization complies with them. Additionally, your agreement includes grant-specific administrative and programmatic conditions with which your organization must also comply. Please see General Condition 15:

Disclosing Conflict of Interests. This new provision of the UGG requires that recipients and subrecipients identify and disclose to EPA any potential conflicts of interest that may arise after the award (or subaward) is made.

As a reminder, EPA has eliminated the requirement for recipients to submit a signed Affirmation of Award for assistance agreements. An assistance agreement recipient demonstrates its commitment to carry out the award by either: 1) drawing down funds within 21 days after the EPA award or amendment mailing date; or, 2) not filing a notice of disagreement with the award terms and conditions within 21 days after the EPA award or amendment mailing date. Please see the "Notice of Award" section of the agreement for more information. Due to this change, you are not required to sign and return a copy of the attached agreement. However, if you wish to file a notice of disagreement with the award terms and conditions, you must email your notice to [Region2\\_GrantApplicationBox@epa.gov](mailto:Region2_GrantApplicationBox@epa.gov). All email attachments must be sent in pdf format.

Sincerely,

A handwritten signature in dark ink, appearing to read "Donald C. Pace", with a stylized flourish at the end.

Donald C. Pace  
Acting Assistant Regional Administrator for  
Office of Policy and Management

Attachment

cc: Fred Mumford, NJDEP  
Renee Dilapo, NJDEP  
James Desir, EPA

	<b>U.S. ENVIRONMENTAL PROTECTION AGENCY</b>  <b>Assistance Amendment</b>		GRANT NUMBER (FAIN): 00242002		DATE OF AWARD
			MODIFICATION NUMBER: D		08/11/2015
			PROGRAM CODE: V		MAILING DATE
			TYPE OF ACTION		08/18/2015
		Augmentation: Increase		PAYMENT METHOD:	ACH#
		Advance			20047
RECIPIENT TYPE: State			Send Payment Request to: EPA, Las Vegas Finance Center		
RECIPIENT:			PAYEE:		
New Jersey Dept of Environmental Protection 440 East State St., P.O. Box 420 Trenton, NJ 08625-0420 EIN: 21-6000928			New Jersey Dept of Environmental Protection 440 East State St., P.O. Box 420 Trenton, NJ 08625-0420		
PROJECT MANAGER		EPA PROJECT OFFICER		EPA GRANT SPECIALIST	
Fred Mumford 440 East State St., P.O. Box 420 Trenton, NJ 08625-0420 E-Mail: Fred.Mumford@dep.state.nj.us Phone: 609-530-2474		James Desir 290 Broadway, ERRD/SPB New York, NY 10007-1866 E-Mail: Phone: 212-637-4342		Cynthia Pabon Grants and Audit Mgt Branch, OPM/GAMB E-Mail: pabon.cynthia@epa.gov Phone: 212-637-3405	
<b>PROJECT TITLE AND EXPLANATION OF CHANGES</b> Hazardous Waste Site Inventory Preliminary Assessments and Site Investigations (PA-SI) This amendment increases the agreement by \$765,000 from \$12,348,008 to \$13,113,008. In addition, the budget and project period expiration dates for this agreement are extended to September 30, 2016. All previous Terms and Conditions remain in effect for funds awarded and obligated prior to the date of this amendment, with the exceptions of, Grant-Specific Administrative Conditions 13 (UTILIZATION OF SMALL, MINORITY AND WOMEN'S BUSINESS ENTERPRISES (MBE/WBE)) and 27 (EXTENSION OF PROJECT/BUDGET PERIOD EXPIRATION DATE), which are superseded by the conditions in this amendment. This amendment also adds an entirely new set of General, and Grant-Specific Administrative and Programmatic conditions that apply to the unobligated balances and newly awarded funds.					
BUDGET PERIOD 10/01/2002 - 09/30/2016		PROJECT PERIOD 10/01/2002 - 09/30/2016		TOTAL PROJECT PERIOD COST \$13,113,008.00	
				TOTAL BUDGET PERIOD COST \$13,113,008.00	
<b>NOTICE OF AWARD</b>					
Based on your Application dated 06/23/2015 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards \$765,000. EPA agrees to cost-share 100.00% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$13,113,008. Recipient's signature is not required on this agreement. The recipient demonstrates its commitment to carry out this award by either: 1) drawing down funds within 21 days after the EPA award or amendment mailing date; or 2) not filing a notice of disagreement with the award terms and conditions within 21 days after the EPA award or amendment mailing date. If the recipient disagrees with the terms and conditions specified in this award, the authorized representative of the recipient must furnish a notice of disagreement to the EPA Award Official within 21 days after the EPA award or amendment mailing date. In case of disagreement, and until the disagreement is resolved, the recipient should not draw down on the funds provided by this award/amendment, and any costs incurred by the recipient are at its own risk. This agreement is subject to applicable EPA regulatory and statutory provisions, all terms and conditions of this agreement and any attachments.					
ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)			AWARD APPROVAL OFFICE		
ORGANIZATION / ADDRESS			ORGANIZATION / ADDRESS		
Grants and Audit Management Branch 290 Broadway, 27th Floor New York, NY 10007-1866			U.S. EPA, Region 2 Emergency and Remedial Response Division 290 Broadway New York, NY 10007-1866		
<b>THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY</b>					
Digital signature applied by EPA Award Official Donald Pace - Acting Assistant Regional Administrator for Policy and Management					DATE 08/11/2015

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FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$ 12,348,008	\$ 765,000	\$ 13,113,008
EPA In-Kind Amount	\$ 0	\$	\$ 0
Unexpended Prior Year Balance	\$ 0	\$	\$ 0
Other Federal Funds	\$ 0	\$	\$ 0
Recipient Contribution	\$ 0	\$	\$ 0
State Contribution	\$ 0	\$	\$ 0
Local Contribution	\$ 0	\$	\$ 0
Other Contribution	\$ 0	\$	\$ 0
Allowable Project Cost	\$ 12,348,008	\$ 765,000	\$ 13,113,008

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.802	CERCLA: Sec. 104(d)(1)	2 CFR 200 2 CFR 1500 40 CFR 33 and 40 CFR 35 Subpart O

[illegible]

## Budget Summary Page

Table A - Object Class Category (Non-construction)	Total Approved Allowable Budget Period Cost
1. Personnel	\$5,618,588
2. Fringe Benefits	\$1,990,576
3. Travel	\$70,811
4. Equipment	\$170,500
5. Supplies	\$231,686
6. Contractual	\$2,896,250
7. Construction	\$0
8. Other	\$404,186
9. Total Direct Charges	\$11,382,597
10. Indirect Costs: % Base	\$1,730,411
11. Total (Share: Recipient <u>0.00</u> % Federal <u>100.00</u> %.)	\$13,113,008
12. Total Approved Assistance Amount	\$13,113,008
13. Program Income	\$0
14. Total EPA Amount Awarded This Action	\$765,000
15. Total EPA Amount Awarded To Date	\$13,113,008



## **Administrative Conditions**

All previous Terms and Conditions to this Agreement remain in effect for funds awarded and obligated prior to the date of this amendment, with the exceptions of Administrative Condition Nos. 13 (UTILIZATION OF SMALL, MINORITY AND WOMEN'S BUSINESS ENTERPRISES (MBE/WBE)) and No. 27 (EXTENSION OF PROJECT/BUDGET PERIOD EXPIRATION DATE), which are superseded by the conditions in this amendment. This amendment also adds an entirely new set of General, and Grant-Specific Administrative and Programmatic conditions that apply to the unobligated balances and newly awarded funds.

### **GENERAL TERMS AND CONDITIONS**

The recipient agrees to comply with the current EPA general terms and conditions available at: [http://www.epa.gov/oqd/tc/general tc applicable aa recipients dec 26 2014.pdf](http://www.epa.gov/oqd/tc/general%20applicable%20recipients%20dec%202014.pdf).

These terms and conditions are in addition to the assurances and certifications made as part of the award and the terms, conditions or restrictions cited below.

The EPA Repository for the general terms and conditions by year can be found at: <http://www.epa.gov/oqd/tc.htm>

### **GRANT-SPECIFIC ADMINISTRATIVE CONDITIONS**

#### **A. GOVERNING REGULATIONS FOR MONETARY AMENDMENTS ORIGINALLY AWARDED USING 40 CFR PARTS 30 OR 31**

Although page 2 of this amendment cites the new governing Federal Grant Regulations at 2 CFR Parts 200 and 1500, please note that these regulations apply solely to the newly added funds and any previously awarded funds not yet obligated (unobligated balances defined at 2 CFR 200.98) by the recipient as of the award date of this amendment. The governing regulations (40 CFR 30 or 31 as applicable) cited in prior amendments remain in effect for funds obligated by the recipient prior to the award date of this amendment.

#### **B. UTILIZATION OF SMALL, MINORITY AND WOMEN'S BUSINESS ENTERPRISES**

##### **MBE/WBE REPORTING, 40 CFR, Part 33, Subpart E**

MBE/WBE reporting is required in annual reports. Reporting is required for assistance agreements where there are funds budgeted for procuring construction, equipment, services and supplies, including funds budgeted for direct procurement by the recipient or procurement under subawards or loans in the "Other" category that exceed the threshold amount of \$150,000, including amendments and/or modifications.

Based on EPA's review of the planned budget, this award meets the conditions above and is subject to the Disadvantaged Business Enterprise (DBE) Program reporting requirements. However, if recipient believes this award does not meet these conditions, it must provide the Grants Specialist with a justification and budget detail within 21 days of the award date clearly demonstrating that, based on the planned budget, this award is not subject to the DBE

reporting requirements.

The recipient agrees to complete and submit a "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements" report (EPA Form 5700-52A) on an annual basis. All procurement actions are reportable, not just that portion which exceeds \$150,000.

When completing the annual report, recipients are instructed to check the box titled "annual" in section 1B of the form. For the final report, recipients are instructed to check the box indicated for the "last report" of the project in section 1B of the form. Annual reports are due by October 30<sup>th</sup> of each year. Final reports are due by October 30<sup>th</sup> or 90 days after the end of the project period, whichever comes first.

The reporting requirement is based on total procurements. Recipients with expended and/or budgeted funds for procurement are required to report annually whether the planned procurements take place during the reporting period or not. If no budgeted procurements take place during the reporting period, the recipient should check the box in section 5B when completing the form.

MBE/WBE reports should be sent to the Region 2 Grants Office's central mailbox ( [Region2\\_GrantApplicationBox@epa.gov](mailto:Region2_GrantApplicationBox@epa.gov)) with a courtesy copy to the grants specialist. The current EPA Form 5700-52A can be found at the EPA Office of Small Business Program's Home Page at [http://www.epa.gov/osbp/dbe\\_reporting.htm](http://www.epa.gov/osbp/dbe_reporting.htm)

This provision represents an approved deviation from the MBE/WBE reporting requirements as described in 40 CFR, Part 33, Section 33.502; however, the other requirements outlined in 40 CFR Part 33 remain in effect, including the Good Faith Effort requirements as described in 40 CFR Part 33 Subpart C, and Fair Share Objectives negotiation as described in 40 CFR Part 33 Subpart D and explained below.

#### **GENERAL COMPLIANCE, 40 CFR, Part 33**

The recipient agrees to comply with the requirements of EPA's Disadvantaged Business Enterprise (DBE) Program for procurement activities under assistance agreements, contained in 40 CFR, Part 33.

#### **FAIR SHARE OBJECTIVES, 40 CFR, Part 33, Subpart D**

A recipient must negotiate with the appropriate EPA award official, or his/her designee, fair share objectives for MBE and WBE participation in procurement under the financial assistance agreements.

In accordance with 40 CFR, Section 33.411 some recipients may be exempt from the fair share objectives requirements described in 40 CFR, Part 33, Subpart D. Recipients should work with their DBE coordinator, if they think their organization may qualify for an exemption.

#### **Current Fair Share Objective/Goal**

The dollar amount of this assistance agreement or the total dollar amount of all of the recipient's financial assistance agreements in the current federal fiscal year from EPA is \$250,000, or more. The **New Jersey Department of Environmental Protection** has negotiated the following, applicable MBE/WBE fair share objectives/goals with EPA as follows:

- for New Jersey MBE: Construction: 5.3%
- for New Jersey WBE: Construction: 12.6%
- for New Jersey MBE: Equipment, Supplies and Services: 1.1%
- for New Jersey WBE: Equipment, Supplies and Services: 3.4%

### **Negotiating Fair Share Objectives/Goals**

In accordance with 40 CFR, Part 33, Subpart D, established goals/objectives remain in effect for three fiscal years unless there are significant changes to the data supporting the fair share objectives. The recipient is required to follow requirements as outlined in 40 CFR Part 33, Subpart D when renegotiating the fair share objectives/goals.

### **SIX GOOD FAITH EFFORTS, 40 CFR, Part 33, Subpart C**

Pursuant to 40 CFR, Section 33.301, the recipient agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to require that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained:

- (a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
- (b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
- (c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
- (d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
- (e) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.
- (f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

### **CONTRACT ADMINISTRATION PROVISIONS, 40 CFR, Section 33.302**

The recipient agrees to comply with the contract administration provisions of 40 CFR, Section 33.302.

### **BIDDERS LIST, 40 CFR, Section 33.501(b) and (c)**

Recipients of a Continuing Environmental Program Grant or other annual reporting grant, agree to create and maintain a bidders list. Recipients of an EPA financial assistance agreement to capitalize a revolving loan fund also agree to require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. Please see 40 CFR, Section 33.501 (b) and (c) for specific requirements and exemptions.

### **C. ADVANCE METHOD OF PAYMENT**

Pursuant to 2 CFR 200.305, the recipient is authorized to receive advance payments under this agreement, provided that the recipient takes action to minimize the time elapsing between the transfer of funds from EPA and the disbursement of those funds. The recipient shall request Federal payments by completing the EPA Payment Requests Form (EPA Form 190-F-04-001) and either emailing or faxing it to the Las Vegas Finance Center at LVFC-grants@epa.gov or 702-798-2423. This form can be found at [www.epa.gov/ogd/forms/forms.htm](http://www.epa.gov/ogd/forms/forms.htm). All email attachments must be sent in pdf format.

### **D. INTERIM FEDERAL FINANCIAL REPORT AND CLOSE-OUT INSTRUCTIONS**

#### **1. Interim Federal Financial Reports (FFRs)**

Pursuant to 2 CFR 200.327, EPA recipients shall submit an interim annual Federal Financial Report (SF-425) to EPA no later than 90 calendar days following the anniversary of the start date of the agreement. The FFR must be faxed to the Las Vegas Finance Office at 702-798-2423, emailed to LVFC-grants@epa.gov, or sent to the address below. A courtesy copy of the interim FFR can be submitted to the Grants and Audit Management Branch using one of the following options: email to Region2\_GrantApplicationBox@epa.gov, fax to 212-637-3518 or sent to us in the mail at U.S. EPA - Region 2, 290 Broadway, 27th Floor, New York, NY 10007. All email attachments must be sent in pdf format. Documents emailed to us in any other format cannot and will not be accepted.

EPA may take enforcement actions in accordance with 2 CFR 200.338 if the recipient does not comply with this term and condition.

#### **2. Closeout**

The Administrative Closeout Phase for this grant will be initiated with the submission of a "final" FFR, in accordance with 2 CFR 200.343. At that time, the recipient must submit the following forms/reports to the EPA Region 2 Grants and Audit Management Branch, if applicable:

- Federally Owned Property Report
- An Inventory of all Property Acquired with federal funds
- Contractor's or Grantee's Invention Disclosure Report (EPA Form 3340-3)

Additionally, the recipient's Final Request for Payment should be submitted to the LVFC.

### **E. EXTENSION OF PROJECT/BUDGET PERIOD EXPIRATION DATE**

EPA has not exercised the waiver option to allow automatic one-time extensions for non-research grants under 2 CFR 200.308 (d)(2). Therefore, if a no cost time extension is

necessary to extend the period of availability of funds (budget period), the recipient must submit a written request, including a justification as to why additional time is needed and an estimated date of completion to the EPA prior to the budget/project period expiration dates. The extension request should be submitted to the EPA, Grants and Audit Management Branch using one of the following options: email to [Region2\\_GrantApplicationBox@epa.gov](mailto:Region2_GrantApplicationBox@epa.gov), fax to 212-637-3518 or sent to us in the mail at U.S. EPA - Region 2, 290 Broadway, 27th Floor, New York, NY 10007. An interim FFR (SF-425) covering all expenditures and obligations to date, must be emailed or faxed to the Las Vegas Finance Office at [LVFC-grants@epa.gov](mailto:LVFC-grants@epa.gov) or 702-798-2423 or sent to the following address:

US EPA, Las Vegas Finance Center  
4220 S. Maryland Pkwy, Bld C, Rm 503  
Las Vegas, NV 89119

To expedite processing of your request, please submit a courtesy copy of the interim FFR to the Grants and Audit Management Branch along with your extension request. All email attachments must be sent in pdf format. Documents emailed to us in any other format cannot be accepted.

#### **F. INDIRECT COSTS**

If the recipient has submitted an indirect cost rate proposal to the cognizant Federal agency but does not yet have an approved rate, it must submit a copy to the EPA Regional Office of the final or provisional Indirect Cost Negotiation Agreement that covers the agreement's budget period before it may charge indirect costs against this Assistance Agreement. If the recipient's negotiated rate does not extend through the life of the Assistance Agreement, additional indirect cost rate proposal(s) must be submitted until the full life of the Assistance Agreement is covered by negotiated indirect cost rates. The recipient **will not charge nor claim for reimbursement any indirect costs that are not covered by a negotiated indirect cost rate.**

#### **G. CYBERSECURITY**

(a) The recipient agrees that when collecting and managing environmental data under this assistance agreement, it will protect the data by following all applicable State law cybersecurity requirements.

(b) (1) EPA must ensure that any connections between the recipient's network or information system and EPA networks used by the recipient to transfer data under this agreement, are secure. For purposes of this Section, a connection is defined as a dedicated persistent interface between an Agency IT system and an external IT system for the purpose of transferring information. Transitory, user-controlled connections such as website browsing are excluded from this definition. If the recipient's connections as defined above do not go through the Environmental Information Exchange Network or EPA's Central Data Exchange, the recipient agrees to contact the EPA Project Officer (PO) and work with the designated Regional/Headquarters Information Security Officer to ensure that the connections meet EPA security requirements, including entering into Interconnection Service Agreements as appropriate. This condition does not apply to manual entry of data by the recipient into systems operated and used by EPA's regulatory programs for the submission of reporting and/or compliance data.

(2) The recipient agrees that any subawards it makes under this agreement will require the

subrecipient to comply with the requirements in (b)(1) if the subrecipient's network or information system is connected to EPA networks to transfer data to the Agency using systems other than the Environmental Information Exchange Network or EPA's Central Data Exchange. The recipient will be in compliance with this condition: by including this requirement in subaward agreements; and during subrecipient monitoring deemed necessary by the recipient under 2 CFR 200.331(d), by inquiring whether the subrecipient has contacted the EPA Project Officer. Nothing in this condition requires the recipient to contact the EPA Project Officer on behalf of a subrecipient or to be involved in the negotiation of an Interconnection Service Agreement between the subrecipient and EPA.

### **Programmatic Conditions**

All previous Programmatic Conditions remain in effect for funds awarded and obligated prior to the date of this amendment. Please note that this amendment adds a new set of Programmatic Conditions for the unobligated funds and funds currently added to the agreement, as follows:

#### **GRANT-SPECIFIC PROGRAMMATIC CONDITIONS**

##### **A. EPA INVOLVEMENT IN THE COOPERATIVE AGREEMENT**

EPA's substantial involvement is defined in jointly developing environmental goals within a workplan; identifying specific measures of progress towards these goals; and articulating strategies and actions designed to achieve them. EPA oversees the implementation of State-authorized programs, and provides technical and analytical support for State-authorized programs. EPA's substantial involvement is met by providing input in workplans and program activities, holding regular conference calls and site visits with NJDEP to discuss progress towards environmental program management and implementation.

##### **B. PROGRESS REPORTS**

1. The recipient shall submit, to the EPA Project Officer, an annual performance report (preferably electronic copy), due on **December 30** of each year during the life of the grant. These reports shall cover:

(a) A comparison of actual accomplishments to the objectives of the Federal award established for the period. Where the accomplishments of the Federal award can be quantified, a computation of the cost (for example, related to units of accomplishment) may be required if that information will be useful. Where performance trend data and analysis would be informative to the Federal awarding agency program, the Federal awarding agency should include this as a performance reporting requirement.

(i) The reasons why established goals were not met, if appropriate.

(ii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

b) *Significant developments.* Events may occur between the scheduled performance reporting dates that have significant impact upon the supported activity. In such cases, the non-Federal entity must inform the Federal awarding agency or pass-through entity as soon as the following types of conditions become known:

(i) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the Federal award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(ii) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more or different beneficial results than originally planned.

### **C. FINAL REPORT**

In accordance with 2 CFR Part 200.328, the recipient agrees to submit to the EPA Project Officer within 90 days after the expiration or termination of the approved project period a final report and at least one reproducible copy suitable for printing electronically. The final report shall document project activities over the entire project period and shall include brief information on each of the following areas:

(a) A comparison of actual accomplishments to the objectives of the Federal award established for the period. Where the accomplishments of the Federal award can be quantified, a computation of the cost (for example, related to units of accomplishment) may be required if that information will be useful. Where performance trend data and analysis would be informative to the Federal awarding agency program, the Federal awarding agency should include this as a performance reporting requirement.

(i) The reasons why established goals were not met, if appropriate.

(ii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

### **D. COMPETENCY OF ORGANIZATIONS GENERATING ENVIRONMENTAL MEASUREMENT DATA**

In accordance with EPA's Policy to Assure the Competency of Organizations Generating Environmental Measurement Data under Agency-Funded Assistance Agreements, for all awards where the maximum value of the assistance agreement will exceed \$200,000 in federal funding and the project will involve the generation or use of environmental data, the Recipient will be required to demonstrate competency prior to award. Alternatively, where a pre-award demonstration of competency is not practicable, the Recipient must demonstrate competency prior to carrying out any activities under the award involving the generation or use of environmental data. The Recipient shall maintain competency for the duration of the project period of this agreement and this will be documented during the annual reporting process. A copy of the Policy, including methods by which competency may be demonstrated, is available online at [http://www.epa.gov/fem/lab\\_comp.htm](http://www.epa.gov/fem/lab_comp.htm).

### **E. PURPOSE - PRE-REMEDIAL ACTIVITIES**

The recipient has agreed to conduct the pre-remedial activities covered by this Agreement during the project period of this Cooperative Agreement. EPA execution of this Cooperative Agreement is not intended to, nor does it, constitute any agreement or commitment by EPA,

either express or implied, to provide any additional federal funds for any future activities relating to the sites.

#### **F. PARTIES' REPRESENTATIVES**

(a) EPA has designated Mel Hauptman, Emergency and Remedial Response Division, United States Environmental Protection Agency, Region 2, 290 Broadway, New York, New York, 10007-1866, (212) 637-4338 to serve as EPA Project Officer for this Cooperative Agreement.

(b) The recipient has designated Frank Sorce, New Jersey Department of Environmental Protection, 380 Scotch Road, West Trenton, New Jersey, 08628, (609) 530-2457, to serve as the recipient's Project Manager for the Cooperative Agreement.

#### **G. SITE ACCESS**

(a) The recipient agrees to satisfy all federal, state, and local requirements, including permits and approvals, necessary for implementing activities addressed in this Cooperative Agreement.

(b) EPA shall have no liability for any harm to any person whether or not caused by acts or omissions of any representatives of EPA during the course of any access to any site by the recipient or anyone deriving or claiming right of access through the recipient and the recipient agrees to inform all such persons of this provision.

#### **H. INFORMATION REGARDING THE SITES**

(a) At EPA's request and to the extent allowed by law, the recipient shall make available to EPA any information in its possession concerning each site. At the request of EPA, representatives of the recipient will meet with EPA to discuss the progress of the projects and exchange site information.

(b) Unless otherwise required by applicable state or federal law, any information which may potentially affect present or planned enforcement actions or investigations shall not be released to the public by the recipient unless approved by both EPA's Region 2 Office of Regional Counsel and the recipient. The recipient shall notify EPA of all such information publicly released by it.

(c) The recipient shall advise EPA of all enforcement actions taken or to be initiated by it regarding any site.

#### **I. THIRD PARTIES**

(a) This Cooperative Agreement is intended to benefit only the recipient and EPA. It extends no benefit or right to any third party not a signatory to this

Cooperative  
Agreement.

- (b) Nothing contained in this Cooperative Agreement shall create or be interpreted or construed to result in:
- (i) any liability to the recipient or to the United States for loss resulting from bodily injury or property damage to any third party for acts or omissions in connection with any site or this Cooperative Agreement;
  - (ii) the waiver of any of rights or immunities provided by law to the recipient or EPA;
  - (iii) any obligation or responsibility by the recipient or EPA to any third party by way of contract or otherwise;
  - (iv) the waiver of any right of EPA to recover any costs pursuant to CERCLA or otherwise to enforce the provisions of CERCLA or any other law against any third party;
  - (v) the waiver of any right of the recipient to enforce any applicable law against any third party.

**J. DISCLAIMER OF AGENCY RELATIONSHIP**

Nothing contained in this Cooperative Agreement shall be construed to create, either expressly or by implication, the relationship of agency between the recipient and EPA.

**K. AMENDMENTS**

Any change in this Cooperative Agreement must be agreed to by both parties in writing.

**L. LIMITATION ON CHARGING COSTS - EQUIPMENT (PURCHASE AND/OR RENTAL)**

For all equipment items with a unit cost of \$5,000 or more, including items such as rental or leasing of a geoprobe or of vehicles, the recipient is precluded from charging costs to the agreement for leasing or buying these items until the recipient has submitted to the EPA Project Officer, and the EPA Project Officer has approved in writing, a justification and cost comparison analysis in accordance with 40 CFR §35.6315(c). The recipient must then obtain equipment through the most cost-effective method. Further, prior to incurring costs for any items of "miscellaneous sampling equipment" or "geoprobe accessories and supplies," the recipient must provide a breakdown of items proposed to be purchased, by unit cost.

**M. LIMITATION ON CHARGING COSTS - SITE APPROVAL**

The recipient has cited the NJDEP's "Immediate Environmental Concern (IEC)" inventory as the potential universe of sites to be considered under this agreement. Sites may be selected for submission to the EPA Project Officer for approval from this universe of sites.

a) However, in accordance with 40 CFR §6055(a)(2)(1), the recipient may not incur costs on any new sites until the EPA Project Officer has approved the site in writing.

b) The recipient may not move forward beyond the specific activity or activities (PCS, PA, SI, ES, SR, etc) approved by EPA without written approval of the EPA Project Officer. The quarterly progress reports that the recipient submits to the EPA Project Officer shall identify the sites and specific activities on which the recipient has incurred cost during the previous quarter. If EPA has not approved any of the sites or activities listed on the report, EPA will notify the recipient's Project Manager of sites/activities included in the quarterly report that have not been approved, and the cost associated with the activities reported for these sites will not be eligible for reimbursement. Please note that costs related to responding to Freedom of Information Act requests for sites are eligible for reimbursement provided that the site had previously been approved by EPA.

**N. LIMITATION ON CHARGING COSTS - SAMPLING**

Pre-CERCLIS Screening sites may be selected from the NJDEP's "Immediate Environmental Concern (IEC)" inventory for submission to the EPA Project Officer for sampling. No sampling work can begin at a Pre-CERCLIS Screening (PCS) site until the EPA Project Officer has approved a specific site in writing.